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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 26, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

ROBERT E. LEE JONES JR.

v.

CASE NO. PUC990157

MCI WORLDCOM NETWORK SERVICES
OF VIRGINIA, INC.
and
MCI WORLDCOM COMMUNICATIONS
OF VIRGINIA, INC.

COMMONWEALTH OF VIRGINIA, ex rel.

JEFFREY D. BARNES

v.

CASE NO. PUC990246

MCI WORLDCOM NETWORK SERVICES
OF VIRGINIA, INC.
and
MCI WORLDCOM COMMUNICATIONS
OF VIRGINIA, INC.

ORDER

On September 17, 1999, Robert E. Lee Jones Jr. filed a petition seeking relief against MCI Telecommunications Corporation ("MCI") and the Virginia Department of Corrections ("DOC") concerning the rates charged to consumers for collect toll calls placed by inmates on presubscribed institutional telephones at DOC facilities (the "Inmate Telephone System"). On December 21, 1999, a similar complaint against MCI was filed

by Jeffrey D. Barnes. Mr. Jones is an inmate at a DOC facility, and Mr. Barnes was an inmate at a DOC facility when his petition was filed but is no longer incarcerated.

By Preliminary Order of February 4, 2000, the Commission docketed and consolidated these matters against MCI WORLDCOM Network Services of Virginia, Inc.,¹ treating the filings as formal complaints pursuant to Rule 5:6 of the Commission's Rules

¹ Upon the merger of the MCI and WORLDCOM parent companies, MCI Telecommunications Corporation of Virginia, which has on file with the Commission a "Maximum Security" tariff for collect calls from prisons, became MCI WORLDCOM Network Services of Virginia, Inc. The company's certificate to provide interexchange telecommunications services in Virginia was reissued in its new name on January 20, 2000, in Case No. PUC990220. Accordingly, in our Preliminary Order the Commission deemed these complaints as filed against MCI WORLDCOM Network Services of Virginia, Inc., and we instituted this proceeding against that company.

Another MCI WORLDCOM company, MCI WORLDCOM Communications of Virginia, Inc., obtained an interexchange certificate on July 12, 2000, in Case No. PUC000120. This company made a tariff filing on September 1, 2000. The tariff filing states, among other things, that although MCI Telecommunications Corporation of Virginia became MCI WORLDCOM Network Services of Virginia, Inc., upon the MCI WORLDCOM merger, the retail services of the former MCI Telecommunications Corporation of Virginia "such as the VDOC contract" were "transferred" to MCI WORLDCOM Communications of Virginia, Inc. (The Commission Staff advises us that it is continuing to work with the companies to ensure that the tariffs on file correspond with the correct entities providing the particular interexchange telecommunications services.)

There has been no claim in the pleadings filed in this matter by MCI WORLDCOM Network Services of Virginia, Inc., that it was not the proper corporate entity before the Commission. Nevertheless, we will add MCI WORLDCOM Communications of Virginia, Inc., as a party in these proceedings inasmuch as that company has represented that service provided under the Inmate Telephone System was "transferred" to it from MCI WORLDCOM Network Services of Virginia, Inc. (As hereinafter used in this Order, "MCI WORLDCOM" or "the Company" will describe both MCI WORLDCOM Network Services of Virginia, Inc., and MCI WORLDCOM Communications of Virginia, Inc.) Should MCI WORLDCOM have any objection to this joinder, or should it believe that any relief that might be granted in this proceeding must be limited solely on the basis of the Commission not having all proper corporate affiliates of MCI WORLDCOM before it, such objection or claim should be made forthwith, with the reasons stated therefor, or it will be deemed waived.

of Practice and Procedure² ("Procedural Rules"). We directed MCI WORLDCOM and invited DOC to respond to the complaints and permitted the complainants to file a reply.

By our Order on Motions of April 25, 2000, we denied motions to dismiss filed by DOC and MCI WORLDCOM on March 29, 2000, and March 30, 2000, respectively. We permitted them to file supplemental responsive pleadings and afforded the complainants the opportunity to reply. In addition, we ruled upon various discovery matters in the April 25 Order.

On May 6, 2000, as amended and substituted by counsel on July 19, 2000, Citizens United for Rehabilitation of Errants-Virginia ("Virginia CURE") filed a petition in this case requesting an examination of the rates charged by MCI WORLDCOM to the families of callers incarcerated in DOC facilities. The petition states that Virginia CURE is a non-profit membership organization whose major purpose is to promote family and community ties during incarceration. In addition, several individuals, including other DOC inmates and persons who allege they receive and pay for calls placed by inmates, have made filings seeking to join this complaint proceeding. Others have filed various pleadings seeking to initiate separate complaints relative to the rates charged under the Inmate Telephone System.

² 5 VAC 5-10-320.

On June 2, 2000, James R. Kibler Jr., Esquire, filed a letter advising that he intended to participate in this proceeding as Special Counsel for the Division of Consumer Counsel, Office of Attorney General.

MCI WORLDCOM and DOC supplemented their initial responses with additional responsive pleadings on May 10, 2000. MCI WORLDCOM and DOC renew their assertion that § 56-234 of the Code of Virginia divests the Commission of jurisdiction to regulate telephone rates charged pursuant to the Inmate Telephone System.³ We stated in the April 25, 2000, Order on Motions that the pleadings before us at that time failed to support a motion to dismiss for lack of jurisdiction. As noted in our Preliminary Order, MCI WORLDCOM has on file with the Commission tariffs under which it purportedly provides collect toll service to DOC inmates and their call recipients. We stated that the Commission has jurisdiction over rates charged and services

³ Section 56-234, in relevant part, states:

It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. It shall be their duty to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. . . . But . . . nothing herein contained shall be construed as applicable to schedules of rates, or contracts for service rendered by any telephone company to the state government, or by any other public utility to any municipal corporation or to the state or federal government.

provided by carriers when such rates and services are pursuant to the carrier's tariffs on file with the Commission. Moreover, as also noted in our Preliminary Order, MCI WORLDCOM's tariff states that the party paying for a collect call is the customer of this service.⁴

We remain unpersuaded by the pleadings that § 56-234 divests the Commission of jurisdiction over this matter. Regardless of whether DOC may be a "subscriber" in any respect to the telephone service provided under the Inmate Telephone System, it is apparent that MCI WORLDCOM treats those persons who receive and pay for the collect calls placed from DOC facilities as its customers under its tariff. Inasmuch as MCI WORLDCOM's own tariff acknowledges these members of the public who receive and pay for such calls as its customers, we cannot find that § 56-234 works to divest the Commission from jurisdiction over the rates for service on calls placed through the Inmate Telephone System. Nor can we find that these persons

⁴ See MCI WORLDCOM's Va. SCC Tariff No. 2, Original Page 81, note 2 (formerly MCI Intercity Telecommunications Services Tariff, Va. SCC Tariff No. 3, 9th Revised Page 40, note 2). In addition, we now further note that MCI WORLDCOM's tariff also states in specific reference to "MCI Maximum Security Collect Calls which are placed from MCI WORLDCOM presubscribed authorized institutional phones" that: "Only Operator Station Collect or Person to Person Collect calls may be placed from authorized institutional telephone numbers to customers who have previously agreed to accept these calls." MCI WORLDCOM SCC Va. SCC Tariff No. 2, Original Page 76, § 3.023(g) (emphasis added).

are not entitled to the same protections afforded to other consumers of public utility services under Virginia law.⁵

As with the jurisdictional defense, MCI WORLDCOM and DOC also continue to assert that complainants lack standing to bring their action. We do not agree that Messrs. Jones and Barnes have a standing problem. The Virginia Supreme Court has determined that a person has standing if he has sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be faithfully developed.⁶ A person is "aggrieved" and has standing if he can demonstrate an immediate, pecuniary, and substantial interest in the litigation and not a remote or indirect interest. An aggrieved person with standing is one who bears an imposition of a burden or obligation that is different from that suffered by the public generally.⁷

It is undisputed that only inmates can initiate calls on the Inmate Telephone System and that the inmate is one of the two parties on a two-party telephone call. The complainants have alleged they bear (at least in part) the financial impact

⁵ Inmates placing calls could themselves be considered consumers of service from MCI WORLDCOM to the extent that they share an economic relationship with the parties called or, moreover, the phone service of parties called could be in the name of an inmate. See discussion of standing *infra* p. 7 and note 8.

⁶ See Cupp v. Fairfax Board of Supervisors, 227 Va. 580, 589 (1984).

⁷ See Virginia Beach Beautification Comm'n v. Board of Zoning Appeals, 231 Va. 415, 419-20 (1986).

of the charges for calls placed by them; and, to the extent the cost of calls may limit the frequency with which the complainants are able to place calls, they are directly interested and affected by this litigation.⁸ We find that Mr. Jones and Mr. Barnes are aggrieved parties as required under Rule 5:6 of our Procedural Rules. We also find that Virginia CURE has standing to join these proceedings as it is an organization whose members include persons who receive and pay for calls from DOC inmates and are thus customers of MCI WORLDCOM's Inmate Telephone System service. Accordingly, other inmates, in addition to the claimants, and others who receive and pay for calls from DOC inmates have standing individually to join these proceedings.

We note that any person may bring a valid complaint or petition before the Commission consistent with our Procedural Rules. However, the parties to this docketed proceeding, the Commission and its Staff, and the public interest would not be well served by fractured and duplicative proceedings which would involve essentially the same issues and seek the same requested relief. Judicial economy and fairness to the parties defending

⁸ See supra note 5. We need not find that the claimants have any constitutional right to make telephone calls. DOC has elected to afford inmates physical access to telephones, and we recognize that DOC may restrict such access. Notwithstanding these limitations placed on inmates by DOC, it appears, however, that MCI WORLDCOM, a public utility subject to the Commission's jurisdiction, has a direct relationship with inmates placing calls from DOC facilities.

these complaints warrant a unified approach in our consideration of the issues raised in these proceedings. It is probable that any relief that might be granted relative to MCI WORLDCOM's rates and charges for its Inmate Telephone System service would extend to all customers receiving the service. We will permit all persons who have requested to join this proceeding to do so, and we will also permit those persons having filed separate complaints or petitions to join as parties. In order to become a party to this proceeding, these persons, whose names are included on the service list for this Order, shall make subsequent filings in accordance with the procedural schedule set forth below.

MCI WORLDCOM states as an affirmative defense in its supplemental responsive pleading that § 56-481.1 of the Code of Virginia governs rates for intrastate interexchange telecommunications services rather than Chapter 10 of Title 56 of the Code. We recognize that the rates of interexchange carriers in Virginia, including MCI WORLDCOM, have not been established by traditional rate base, rate of return regulation. Instead, rates for interexchange telecommunications services have been provided by the carriers "on a competitive basis" pursuant to § 56-481.1.⁹

⁹ See Applications of MCI Telecommunications Corp. of Va., et al., For Certificates of Public Convenience and Necessity to Provide Inter-LATA, Inter-exchange Telecommunications Service and to Have Rates Established on

MCI WORLDCOM asserts that its charges for service provided under the Inmate Telephone System are comparable with the rates the Company (and other interexchange carriers) charges for collect call service to the general public.

The enactment of § 56-481.1 in 1984 empowered the Commission to waive traditional ratemaking procedures for interexchange telecommunications services if we found that such services would be provided on a competitive basis, provided the resulting rates are nondiscriminatory and in the public interest. Although up to now we have elected to permit MCI WORLDCOM and other interexchange carriers to allow the competitive marketplace to determine rates and charges for their services, the Commission has maintained regulatory oversight over the activities of certificated interexchange carriers and has retained the authority to reimpose traditional regulatory requirements on any carrier in the event the competitive marketplace does not function properly.¹⁰

We believe that the complaints before us present factual questions as to whether the intrastate interexchange telecommunications services under the Inmate Telephone System is being provided on a competitive basis and, if so, whether the

Competitive Factors, Case Nos. PUC840022, et al., Final Order and Opinion, 1984 SCC Ann. Rep't 333, aff'd sub nom. GTE Sprint Communications Corp. of Va. v. AT&T Communications of Va., et al. 230 Va. 295 (1985).

¹⁰ Id. at 344, 350.

rates charged for such service are nondiscriminatory and in the public interest as required by § 56-481.1. We will, therefore, convene a public hearing for taking evidence on these issues.

MCI WORLDCOM is required, as are all certificated carriers, to file its schedules of rates and charges with the Commission. WORLDCOM must charge only such tariffed rates.¹¹ Complainants have alleged that the rates MCI WORLDCOM charges for service pursuant to the Inmate Telephone System do not comport with the Company's rate schedule¹² for its Maximum Security Collect calls classification on file with the Commission.

On September 1, 2000, MCI WORLDCOM filed¹³ a proposed replacement Maximum Security tariff accompanied with a motion requesting us to accept the filing and to waive the public notice requirements of the Commission's Rules Governing the Certification of Interexchange Carriers.¹⁴ In the motion, the Company explains that the rates, terms, and conditions in the proposed tariff took effect on January 1, 1999, in accordance with the terms of a contract with DOC.

¹¹ See C & P Tel. Co. of Va. v. Bles, 218 Va. 1010, 1013-14 (1978).

¹² MCI WORLDCOM Communications of Virginia, Inc., Va. SCC Tariff No. 2, § 3.0233 (formerly MCI Telecommunications Corp. of Virginia, Va. SCC Tariff No. 3).

¹³ Doc. Control No. 000910006.

¹⁴ 20 VAC 5-400-60(L).

Previously, by letter of April 18, 2000, to Mr. William Irby, Director of the Commission's Division of Communications, MCI WORLDCOM advised the Commission that its tariff on file with the Commission does not reflect the rates, terms, and conditions that have been in effect since January 1 of last year for its Maximum Security collect calls service. The Company requested that its tariff for this service be withdrawn with a retroactive effective date of January 1, 1999, maintaining that the tariff had been "originally filed for informational purposes only," and that this service was not subject to the Commission's jurisdiction. By letter of May 5, 2000, Mr. Irby advised MCI WORLDCOM that the Company's requested withdrawal of and retroactive effect to the tariff could not be accepted as it was not filed in compliance with the Commission's regulations. Mr. Irby urged the Company to file a revised Maximum Security tariff with correct rates.

We will rule on MCI WORLDCOM's September 1, 2000, motion by separate order in another docket. However, at the public hearing we are establishing herein, we will also consider whether MCI WORLDCOM has charged rates inconsistent with its filed tariff and, if so, what action should be taken in response.

Accordingly, IT IS ORDERED THAT:

(1) MCI WORLDCOM Communications of Virginia, Inc., shall be joined with MCI WORLDCOM Network Services of Virginia, Inc., as a party to these proceedings.

(2) The motions to dismiss of MCI WORLDCOM and DOC are denied for the reasons set forth above.

(3) A public hearing is scheduled for December 12, 2000, at 10:30 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to the issues raised by these complaints as to: (a) whether the intrastate interexchange telecommunications services furnished by MCI WORLDCOM under the Inmate Telephone System is being provided on a competitive basis and, if so, whether the rates charged for such service are non-discriminatory and in the public interest as required by § 56-481.1 of the Code of Virginia; and (b) whether MCI WORLDCOM has charged rates under the Inmate Telephone System inconsistent with its Maximum Security tariff on file with the Commission and, if so, what action should be taken in response.

(4) Pursuant to Rule 5:11 of the Commission's Procedural Rules (5 VAC 5-10-370), Virginia CURE is granted leave to substitute its amended petition of July 19, 2000, for its

petition filed May 8, 2000; and it is joined as a party to this proceeding.

(5) Any other person desiring to become a party to this proceeding who places or receives and pays for intrastate calls on the Inmate Telephone System, and whose name appears on the service list to this Order, shall file with the Clerk of the Commission, on or before October 12, 2000, an original and fifteen (15) copies (incarcerated persons may file a single copy) of a statement describing his interest in this proceeding and the nature of his intended participation and shall simultaneously serve a copy on counsel for MCI WORLDCOM, DOC, and on the Special Consumer Counsel.

(6) On or before October 20, 2000, Messrs. Jones and Barnes, Virginia CURE, and any other persons who have joined these proceedings as additional complainants by filing pursuant to the foregoing paragraph shall file with the Clerk of the Commission an original and fifteen (15) copies (incarcerated persons may file a single copy) of any testimony and exhibits intended to be presented at the hearing and shall simultaneously serve a copy on counsel for MCI WORLDCOM, DOC, and on the Special Consumer Counsel.

(7) On or before November 2, 2000, the Commission's Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits it intends to

present at the hearing and shall simultaneously serve a copy on all parties.

(8) On or before November 15, 2000, the Special Consumer Counsel shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits he intends to present at the hearing and shall simultaneously serve a copy on all parties.

(9) On or before November 28, 2000, MCI WORLDCOM and DOC shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits they intend to present at the hearing and shall simultaneously serve a copy on Messrs. Jones and Barnes, Virginia CURE, the Special Consumer Counsel, and any other parties filing testimony to be presented at the hearing.

(10) All filings ordered herein shall be made with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, 1300 East Main Street, Richmond, Virginia 23218, referencing Case Nos. PUC990157 and PUC990246 and, except as otherwise directed in this Order, shall be in accordance with Rule 6:2 of the Commission's Procedural Rules (5 VAC 5-10-460).

(11) This matter is continued for further orders of the Commission.